(1)

Supreme Court, U.S.
FILED

JUN 26 2003

No. 03-344

IN THE

Supreme Court of the United States

M. ROBERT ULLMAN,

Petitioner

v.

UNITED STATES OF AMERICA

On Petition For Writ of Certiorari
To The United States District Court
for the Eastern District of Pennsylvania
and
The U. S. Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

M. ROBERT ULLMAN
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23 pp

THE QUESTION PRESENTED FOR REVIEW

Did the Motion by the United States of America, for Summary Judgment (Fed. R. Civ. P 56 (c)), citing lack of "A Genuine Issue as to any Material Fact" in the case of United States of America vs. M. Robert Ullman, and the ruling by the U.S. District Court in granting that Summary Judgment Motion, violate Ullman's right to a jury trial as guaranteed by the Amendment VII (the Bill of Rights) of the U. S. Constitution?

Does the Court concur with the Scintilla of Evidence Rule that states: If even the slightest amount of relevant and substantial evidence favors the non-movant in a Motion for Summary Judgment, the motion cannot be granted and the factual issue must go to the jury ?

Does the Court agree that the non-moving party (M. Robert Ullman) has every right to offer substantial, material and relevant facts and evidence in opposition to the United States Motion for Summary Judgment and that these facts should be considered by the court?

Does the court agree that if the lower courts, in their written opinion, copy word for word the position of the moving party (United States) and reject every bit of fact and substantial and compelling evidence presented by the non-moving party, a ruling that should have been left to a jury, the Court violated the Constitutional rights (a right to a jury trial) of M. Robert Ullman.

LIST OF ALL PARTIES TO THE PROCEEDINGS

1. United States of America – Plaintiff
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3. Patrick L. Meehan, Esquire
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TABLE OF CONTENTS

page i	Questions Presented for Review
page ii	List of All Parties to the Proceedings
page iii	Table of Contents
page 1	Citation of Official Opinion and Orders
pages 2-3	Statement for Basis of Jurisdiction
page 4	The Constitutional Provisions
page 5	Statement of the Case
pages 7-13	Reason For Granting the Writ
pages 14-19	Summary of Facts
	Joint Appendix
pages 20-31	A. Defendant and Counterclaim Plaintiff Answer to U. S. of America Second Motion for Summary Judgment - February20, 2002
pages 32-50	B. Order of U.S. District Court, May 8, 2002
pages 51-63	C. Petition to U. S. Court of Appeals for a Rehearing re. Issue of Material Fact - February 5, 2003

CITATION OF OFFICIAL OPINIONS

May 8, 2002 - United States District Court for the Eastern District of Pennsylvania - Judge Ronald L. Buckwalter:

"The United States Motion for Summary Judgment on Defendant's (Ullman) counterclaim pursuant to 26 U.S.C. #7433 alleging that the IRS engaged in unauthorized collection activities is granted and Defendant's counterclaim is dismissed.

Civ. No. 01 -CV 00272

June 13, 2002 - United States District Court for the Eastern District of Pennsylvania Judge Ronald L. Buckwalter:

"Upon consideration of Defendant's Motion for Reconsideration of order entered May 8, 2002, it is hereby ordered that Defendant's motion is denied.

Judgment is entered in favor of Plaintiff and against Defendant.

Civ. No. 01-CV00272

January 28, 2003 - United States Court of Appeals for the Third Circuit - Circuit Judges Nygaard, Greenberg, Cowen:

"Ordered and adjudged by this court that the judgment of the District Court entered on June 13, 2002 be, and the same is affirmed."

No. 02 -2752

April 14, 2003 - United States Court of Appeals for the Third Circuit - Judge Nygaard

"The Petition for Rehearing filed by the Appellant (Ullman) in the above-entitled matter, having been submitted to the judges who participated in the decision of this court, and no judge who concurred in the decision having asked for a rehearing, the Petition for Rehearing is hereby denied. It is so ordered."

No. 02-2752

STATEMENT OF BASIS FOR JURISDICTION

1. April 14, 2003 - United States Court of Appeals denied the Appellant's Motion for Rehearing of the January 28, 2002 ruling by the U. S. Court of Appeals which affirmed the May 9, 2002 order of the U. S. District Court for the Eastern District of Pennsylvania and its subsequent judgment entered on June 13, 2002.

2. The Petitioner, M. Robert Ullman, is requesting the U. S. Supreme Court to examine a fundamental question of law as it pertains to the (seventh) VII Amendment to the U. S. Constitution, the right to a jury trial.

The lower courts granted the United States of America a Motion for Summary Judgment pursuant to Rule 56 (c), which states:

"(c) The judgment sought shall be rendered forthwith if the pleading, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Thus the matter to c onsider is the "GENUINE ISSUES OF MATERIAL FACT".

"In the Law of Summary Judgment, a Genuine Issue of Material Fact is a triable, substantial of real question of fact supported by substantial evidence.

Substantial Evidence is evidence that a reasonable mind might accept as adequate to support a conclusion, evidence beyond a scintilla.

"Scintilla of Evidence Rule" - a common law doctrine holding that if even the slightest amount of relevant and

substantial evidence favors the non-movant in a motion for Summary Judgment or for a direct verdict, the motion cannot be granted and the factual issues must go to the jury."

The Petitioner argues that the facts in this case show that there are Genuine Issues of Material Fact that were provided by the Petitioner in his answer to the United States Motion for Summary Judgment and likewise in his counter motion for Summary Judgment.

That "material fact" is essential to the entire case and it centers upon the evidence supplied by Ullman in regards to 26, U.S.C. 6159 - "Installment Agreement".

"The non-movant's allegations must be taken as true, and when these assertions conflict with those of the mover, the former must receive the benefit of doubt." Goodman v. Meade Johnson & Co. 534 F 2d 566, 573 (3rd Cir. 1976)

The courts disregarded this issue of "material fact" and thus violated Ullman's right to a jury trial as guaranteed in Amendment VII of the U. S. Constitution.

Only the U. S. Supreme Court can make a final ruling in "material fact" and Amendment VII of the U. S. Constitution as it applies to Summary Judgment.

CONSTITUTIONAL PROVISIONS

AMENDMENT VII - BILL OF RIGHTS

In suits at Common Law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

Summary Judgment is only a procedure for promptly disposing of actions in which there is no genuine issue as to material fact. In the law of Summary Judgment, a genuine issue of material fact is a triable, substantial of real question of fact supported by substantial evidence.

A STATEMENT OF THE CASE

In the case of United States of America (Plaintiff) v. M. Robert Ullman (Defendant) #01-0272 and its Motion for Summary Judgment and Defendant's counterclaim pursuant to 26 USC #7433 alleging that the Internal Revenue Service intentionally, recklessly or negligently violated the Internal Revenue Code in collecting taxes allegedly owed by him. Defendant, a pro se litigant, also moved for Summary Judgment on his counterclaim; the United States District Court for the Eastern District of Pennsylvania **granted** the United States Motion for Summary Judgment and denied the Defendant's Motion for Summary Judgment.

The United States Court of Appeals for the Third Circuit (#02-0752) reaffirmed the District Court decision.

The United States of America made a motion for Summary Judgment pursuant to Rule 56c of the Federal Rules of Civil Procedure arguing that "a court shall grant Summary Judgment if the pleadings, together with the evidence in the case, show that there **is no genuine issue of any material fact** and that the moving party is entitled to judgment as a matter of law Fed. R. Civ. 56c.

The United States of America initiated their action, but provided no evidence or testimony to support the motion.

The Defendant, M. Robert Ullman, in response to the United States Motion for Summary Judgment and his own Motion for Summary Judgment, offered facts and substantial evidence to support his response and his counterclaim.

The U. S. District Court issued their opinion by stating "... a Motion for Summary Judgment shall be granted if the court determines that 'there is no genuine issue as to any material

fact and that the moving party is entitled to judgment as a matter of law.'"

In their decision, the District Court and the Court of Appeals **copied**, almost word for word, the argument as presented by the United States.

Thus, it stands to reason that there cannot be any genuine issue of material fact if the court accepts all the arguments of the United States to be true and all of the facts and evidence submitted by the defendant, M. Robert Ullman, as not relevant or even slightly substantial; then the Court, by their action and opinions, violated the Defendant's right to trial by jury.

REASON FOR GRANTING WRIT

The U. S. District Court and U. S. Court of Appeals have decided a Motion for Summary Judgment introduced by the Plaintiff (United States of America) in favor of the United States of America. Such action prohibits the Defend-ant, M. Robert Ullman, from exercising his constitutional rights to jury trial (the Seventh Amendment) and this action violated the due process clause (the Fifth Amendment).

The United States of America initiated this proceeding by filing a one-count complaint to reduce a tax assessment to judgment against M. Robert Ullman.

M. Robert Ullman answered the complaint and filed a counterclaim against the United States for unlawful collection activity pursuant to 26 USC 7433.

The United States of America filed a Motion for Summary Judgment and Ullman answered the complaint stating: "The United States Motion for Summary Judgment and its Memorandum in support of that motion is so full of factual errors that were it not for the name M. Robert Ullman that appears on the heading, it would be difficult to recognize that the Department of Justice is filing a motion for Summary Judgment in the same Civil Case No. 01-cv-272. Exhibit E in the Appendix points out the errors.

By approving the Plaintiff's (United States of America) Motion for Summary Judgment, the court violated the due process clause of the Fifth Amendment which prohibits the government from unfairly or arbitrarily depriving a person of property.

The Summary Judgment motion by a Plaintiff, the United States of America, can be granted only if there is "no genuine issue of material fact". The word "no" means "in no

uncertain terms, or not any".

Allowing the United States of America, acting as the Plaintiff, to file a Motion for Summary Judgment and granting such motion by the court, allows the United States of America (our government) to be the judge, the jury and to be omnipotent or almighty, having virtually unlimited authority or influence.

The court should recognize the difference between the United States of America, acting as the plaintiff in a civil case and filing a Motion for Summary Judgment and that of a citizen, a plaintiff or defendant filing a Motion for Summary Judgment because a citizen does not have the power (financial or political) to gain the same results. A Pro Se Defendant, one who cannot afford an attorney who has "tax" experience, is extremely disadvantaged.

M. Robert Ullman respectfully requests the court to correct this disadvantage by restricting the rights of the United States of America acting in its capacity as a plaintiff in filing Motion for Summary Judgment.

Partial excerpts from documents entered in the court record show, pursuant to Rule 56 of the Federal Rule of Civil Procedure, that Genuine Issues of Material Fact did exist and that the moving party (United States) was not entitled to Judgment as a matter of law.

Summary Judgment Rule 56 states: "If there is no genuine issue of material fact the moving party is entitled to judgment as a matter of law." ("No" means not any)

A material fact is a fact that is significant or essential to the issues at hand.

The existing material facts at issue are:

1. 433D Agreement signed Jan. 25, 1985

   a. "Amount owed as of Jan. 25, 1995 - $1,627,884.69"

   b. "Earliest CSED Oct. 23, 1999"

   c. "Conditions of this agreement
   "This agreement is based upon your current financial circumstances. It is subject to revisions or termination if subsequent financial information required by the IRS reflects a change in your ability to pay ."

   d. "Additional condition: Agreement will be re-evaluated on or about Jan. 26, 1997."

2. Letter from District Director, IRS to M. Robert Ullman Jan. 6, 1998:

   "We would like to advise you of your current status of these penalties. The collection statute of limitations on the Trust Fund Recovery Penalty assessed in the amount of $952,000 will expire on October 23, 1999 while the statute on the penalty that was assessed in the amount of $80,430.47 is scheduled to expire February 4, 2001. Unless you voluntarily extend the collection statutes of limitation for each penalty or the statutes are extended as a matter of law, e.g. the filing of an offer in compromise, a bankruptcy petition, certain types of law suits, etc. or a change in the law, we will not attempt collection beyond the respective expiration date."

3. "Congressional History Sheet" Nov. 20, 1994 - Excerpts from notes of Antonio Cruz, Manager of the IRS in Reading, Pa., obtained thru an F.O.I. Request:

   "Our private opinion is that he (Ullman) cannot win the

suit (against Meridian) unless Meridian settles."

4. Notes of IRS Agent Eugene Clarke - Jan. 25, 1995, obtained thru a F.O.I. Request:

   "Trust Fund Recovery penalty assessments have been made against M. Robert Ullman in the amounts of $952,010.88 and $80,430.47 on October 23, 1999 and Feb. 4, 1991 respectively. Mr. Ullman has entered into an installment agreement and is paying $600.00 per month on the liabilities. There is no potential for full payment from Mr. Ullman other than from the action described in Item 6" (Ullman action against Meridian Bank).

5. Letter from Attorney Jack A. Linton, LLM Taxation, dated October 4, 2002. Attorney Linton represented M. Robert Ullman during 1993 and 1994 and was the attorney who negotiated a payment agreement with agent Eugene Clarke.

   "We discussed the 1994 installment payment agreement which I had attempted to negotiate on your behalf with Revenue Agent Eugene Clark of the Internal Revenue Service. At that time you were actively pursuing your claim against Meridian Bank and expressed guarded optimism with respect to your ability to either collect the claim or effectuate a large settlement with Meridian Bank. Because of that possibility and because a number of your earlier Offers in Compromise had been rejected by the Service, we entered into good faith negotiations with the Service and had arranged an agreement with Mr. Clark at $400.00 per month to be reviewed at the end of one year based upon your concerns about possible reductions in your pension payments. The agreement was rejected at that time, i.e. when we were together with Mr. Clark or shortly thereafter because of the conditions which you set forth in the offer, i.e. I am not admitting responsibility for

the tax debt. This was subsequently followed up by an additional reason for rejection, i.e. the Service's determination that your expenses were excessive. There is no doubt that all concerned were aware that this was a stop-gap agreement pending the outcome of your litigation with Meridian Bank since based upon both your income and the monthly payments that you would be making there was no reasonable possibility of the liability asserted by the Internal Revenue Service being paid in full.

"The foregoing is my recollection for what occurred in that brief span of time during the fall of 1994."

6. Notes of IRS Problem Resolution Officer Louis Romito (obtained thru a F.O.I. Request):

April 10, 2000 - "Received a fax from TP addressed to Bucci (agent) and me. I transmitted my letter of 3/20/99 in which I stated a 433D resembles a contract. I also transmitted a letter from PBGC outlining the terms of repayment for his overpaid pension. PBGC (Pennsion Benefit Guarantee Corp.) was to reduce TP's pension from $1,016 to $641 - adrop of $375, which includes a 10% reduction to cover $40K he owes them (overpayment). Ullman's logic is that his monthly payment to cover the IRS should be reduced by the amount of his pension reduction. I called Bucci to outline the options as I saw them."

"Accept Ullman's proposal at face value. The COSED will expire in Feb. 2001. It may be unfair to the TP and counter productive for the govt. to hold the line, perhaps extending the statute, and litigate for $4,500 we would not realize on a $200,000 debt we will write off in 11 months.

"Accept Ullman's proposal to consider the reduction generated by PBGC but ..." (balance of statement not included).

7. Letter from Louis Romito - Problem Resolution Officer, IRS, dated March 29, 1999:

"As the Taxpayer Advocate with oversight responsibility for the processing of SFC inquiries made by Pennsylvania Taxpayer, I conducted a review of your concern. My approach was to look at the basic issue. I did that and came to the following conclusion: As you note, the language of the (433D) agreement states, "agreement is based upon your current financial circumstance. it is subject to revision or termination IF subsequent financial information required by the IRS reflects a change in your ability to pay ...(emphasis added). Your installment agreement does not meet the legal standard of a contract. However, I agree with you that it is sufficiently contract-like that both parties to the agreement are bound by its terms as though it was a contract."

8. Memorandum (by the United States) in support of United States Second Motion for Summary Judgment February 11, 2002:

"The Installment Agreement (433D) is not a contract. Contract law principles are inapplicable in this case because a written installment agreement pursuant to 26 U.S.C. #6159 is not a contract ... because written installment agreements are creatures of statute and designed to accommodate taxpayers who are unable to pay the balance of their tax liability in lump sum." "Such a written installment agreement allows the taxpayer to satisfy a tax liability by making scheduled periodic payments until the liability is paid in full."

9. Memorandum - Judge J. Buckwalter, U. S. District Court for Eastern District of Pennsylvania - May 8, 2002:

"It was only because of the pre-existing tax liability and

the assumption that a monthly payment arrangement would facilitate the collection process that the IRS agreed to accommodate Ullman and allow for payment of the assessment on an installment basis."

"Thus although an agreement in the general sense, the installment agreement is not a contract in the sense that breach of its terms give rise to a common law breach of contract action because of the absence of consideration on the part of Ullman."

"Pursuant to the installment agreement, the IRS allowed Ullman to satisfy his pre-existing tax liability over time."

9. Note: It was impossible for a $600.00 per month payment beginning on Jan. 25, 1995 and ending on Feb. 5, 2001 to pay a debt of $1,627,884 in full. The assessment was increasing by $66,000 per year (interest).

SUMMARY OF FACTS

The United States initiated the proceeding on January 18, 2001 by filing a one-count complaint to reduce a tax assessment to judgment against M. Robert Ullman for unpaid tax liability. Defendant's tax liability stems from a Trust Fund recovery penalty assessment resulting from a determination that he was the responsible person for the non-payment of employees' withholding taxes by Canoe Manufacturing Co. Inc. (company was liquidated in 1992 by the U. S. Bankruptcy Trustee). Ullman was the majority stockholder.

The tax liability was for:

Tax period ending Dec. 31, 1988 - $950,256.88, assessment date Oct. 23,1989

Tax period ending June 30, 1989 - $80,444.47, assessment date Feb. 4,1991. (The initial assessment was incorrectly made against the Chapter 7 Trustee, thus increasing the final assessment date.) (On September 18, 2000 the IRS discovered an error in the Feb. 4,1991 assessment and changed the amount to $45,651.51.)

The total due (for both assessments) on January 25, 1995 was $1,627,884.69, which included interest and penalty, and the amount was growing each year.

On Jan. 25, 1995 IRS Agent Eugene Clark and M. Robert Ullman completed negotiation of an agreement whereby Ullman agreed to pay $600.00 per month until the end of the Collection Statute of Limitation date (CSED) of Feb. 4, 2001 (10 years from the last assessment of 2/4/91) with the following verbal provision: If the PBGC (Pension Benefit Guarantee Corp.) reduced his monthly pension, he

was entitled to reduce his monthly IRS payment by a like amount.

The total amount that could have been paid during the period from Jan. 25, 1995 to Feb. 4, 2001 (73 months) was $43,800.00

The IRS agent dictated the terms, amount and provisions and wrote the 433D Agreement which both parties signed.

Originally both parties expected the PBGC to make their final determination within 2 years. Prior to signing, Agent Clarke wrote into the agreement the additional condition, "Agreement will be re-evaluated on or about 1-27-97" and pointed out other existing provisions of the agreement.

"This agreement is based upon your current financial circumstances. It is subject to revision or termination of subsequent financial information required by IRS reflects a change in your ability to pay."

Both parties agree that the CSED (10-year Statute of Limitation) for the period ending Dec. 31, 1988, assessed on October 23,1989 in the amount of $950,256.88 expired on October 23, 1999.

The 433D agreement, signed on Jan. 25, 1995, included the entire amount as one figure.

Ullman continually made the monthly payment of $600.00.

On March 10, 2000, the PBGC (Pension Benefit Guarantee Corp.) made their final determination to reduce the Ullmans' monthly pension from $1,016.04 to $641.00, a

reduction of $374.00.

Ullman immediately requested the IRS to allow him to reduce his $600.00 payment to $225.40 (a $374.00 reduction).

The IRS refused to allow the reduction.

Beginning on May 25, 2000 Ullman reduced his monthly check from $600.00 to $225.40 and continued to send this amount until January 25, 2001 when the United States initiated the one-count complaint. The CSED (Statute of Limitation date) for the $45,651.51 was February 4,2001.

Ullman deducted a total of $3,366.00 over that period (ending Feb. 4, 2001).

The United States has argued that the 433D agreement signed on Jan. 25, 1995 was an Installment Agreement, thus requiring full payment in accordance with 26, U.S.C. 6159. (Exhibit 1)

Ullman has argued that the 433D Agreement was not an Installment Agreement as full payment was never a possibility, as $600.00 per month for 37 months could not possibly pay a debt of $1,627,000, increasing at the rate of at least $65,000 per year. It was very similar to an Offer in Compromise under **#26-USC 7122**.

The action brought by the United States included only the second portion ($45,651.51) as the first portion ($950,250.00) has expired on Oct. 21, 1999, prior to any PBGC reduction.

In the U. S. Motion for Summary Judgment (2/11/02), the United States wrote:

A. "The party seeking Summary Judgment bears the initial responsibility of demonstrating the absence of any genuine issue of material fact." and

B. #26 CPR #301-6519. Thus an installment Agreement differs from an Offer in Compromise Agreement where the taxpayer and the Internal Revenue Service each surrender rights in order to terminate a tax dispute. The written Installment Agreement involves no surrender of rights by the taxpayer; the taxpayer gains a one-sided advantage by postponement of overdue taxes, but must fully pay the taxes over time."

Ullman, in his answer to the U. S. Motion for Summary Judgment, wrote, "If, as the government claims, an Installment Agreement is only accepted if it provides, over time, full payment, then surely the 433D Agreement cannot be considered, by law, to be such an agreement.

Ullman brought a counterclaim action on February 8, 2001 alleging unauthorized collection activity in violation of 26 USC #7433.

On May 8, 2002 the U. S. District Court ruled, "Therefore, because of the lack of supporting evidence suggesting that the January 25, 1995 agreement was actually an Offer in Compromise and the evidence which establishes that the document was indeed an Installment Agreement, the court holds that the document signed by Ullman on January 25, 1995 was an Installment Agreement."

"To the extent that Ullman argues that the IRS refusal to accept Ullman's Offer In Compromise is an unauthorized collection activity, Ullman's argument fails. Compromising tax liability is a purely discretionary activity and will not give rise to a claim for intentional, reckless or negligent violation

of the Internal Revenue Code."

It must be noted that the terms of the 433D Agreement signed on Jan 25, 1995 were dictated by the Revenue Agent and it was clearly understood by both parties that:

1. $600.00 a month could not possibly pay a debt of $1.6 million in 37 months (or even in an infinite period).

2. A reduction in the PBGC payments would allow Ullman to make a similar reduction.

The IRS has never provided any testimony (sworn to or not) from Agent Clarke which refuted Ullman's claim regarding the terms of the agreement.

M. Robert Ullman appealed the District Court decision to the United States Court of Appeals for the Third District on July 15, 2002.

On Jan. 28, 2003 the Court of Appeals affirmed the decision by the District Court. The court refused to consider the substantial and compelling evidence submitted by M. Robert Ullman regarding:

A. the agreement signed on Jan. 25, 1995 by Agent Eugene Clarke

B. the legal qualifications of an Installment Agreement.

Ullman has argued that the legal definition of an Installment Agreement covered under USC 6159 requires "payment in full" and is an issue of material fact, a fact that is significant or essential to the issue at hand, and supports his

argument that there are genuine issues and that the decision by the District Court, confirmed by the U. S. Court of Appeals, in approving the United States Motion for Summary Judgment, violated his Constitutional rights (Amendment VII) for a jury trial which would have enabled him to present his case, including the issue of 26 U.S.C. 6159. The IRS broke both a written and oral agreement and by doing so, intentionally, recklessly violated the IRS code in collecting taxes.

In simple terms, one may call a giraffe a cow, but if it does not look like a cow or moo like a cow, or give milk like a cow, it certainly can't be a cow. An Installment Agreement can be called an Installment Agreement under U.S.C. 6159 if, and only if, it provides for full payment prior to the end of its statutory (CSED) period.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
Plaintiff and Counter-claim Defendant	:	Civil Action No. 01-0272
v.	:	
M. ROBERT ULLMAN, Defendant and Counter-claim Plaintiff	:	

COUNTERCLAIM PLAINTIFF, M. ROBERT ULLMAN'S ANSWER TO THE SECOND MOTION FOR SUMMARY JUDGEMENT OF THE UNITED STATES

STATEMENT

The UNITED STATES SECOND MOTION FOR SUMMARY JUDGEMENT and its MEMORANDUM in support of that motion is so full of FACTUAL ERRORS that were it not for the name of M. Robert Ullman that appears in the heading, it would be difficult to recognize that the Department of Justice is filing a second motion for Summary Judgement in the same Civil Case No. 01-CV-272.

In order to put the true facts in front of this court, the Counterclaim Plaintiff offers the following FACTUAL INFORMATION:

1. There were two penalty assessments made against M. Robert Ullman, as a responsible party, for the non-payment of Trust Fund Taxes

by Canoe Manufacturing Co.

a. Tax Period Ending Dec. 31, 1988. Assessment date Oct. 23, 1989, Statute of Limitation for collection (10 years) Oct. 23, 1999, in the AMOUNT OF $952,010.88. (Exhibit #1)

b. Tax period ending June 30, 1989. Assessment date Feb. 4, 1991, STATUTE OF LIMITATION FOR COLLECTION (10 YEARS) FEB. 4, 2001 in the amount of $80,430.47 (Exhibit #2)

2. The IRS filed a LIEN against M. Robert Ullman in Berks County (Pa.) Court for period ending Dec. 31, 1988 on March 11, 1990 (Exhibit 3A) Period ending June 30, 1989 on March 12, 1991 (Exhibit 3B)

3. On JANUARY 25, 1995, M. Robert Ullman signed a 433D INSTALLMENT AGREEMENT. The total due on that date, including interest, was **$1,627,884.69**. (Exhibit #4)

   In this agreement, M. Robert Ullman agreed to pay **$600.00 per month.**

   The total payment due until the last Statute of Limitations collection date was **$36,600.00** (61 months X $600.00), BUT WAS SUBJECT TO CHANGE.

   M. Robert Ullman made monthly payments until Jan. 1, 1990 **totaling $33,604.00.**

4. On March 9, 1989, the Canoe Manufacturing Chapter 11 case was, upon a motion of the

Internal Revenue Service, converted to a Chapter 7 Liquidation.

An IRS representative was in Bankruptcy Court (Reading, Pa.) when the court approved the IRS motion. Thus, the IRS knew the exact date that M. Robert Ullman "LOST CONTROL" of the company. After that date, until June 30, 1989 the U. S. Attorney was responsible for payment of Trust Fund Taxes.

The U. S. Trustee was also responsible for filing the quarterly returns for the first and second quarters. (Exhibit #5)

5. The Counterclaim Plaintiff, M. Robert Ullman, has zero assets and no life insurance.

   Other than the IRS liens, the following liens are on record against M. Robert Ullman:

   a. Meridian Bank (First Union) $3,310,262. (Exhibit #6)

   b. Small Business Administration - a balance of $211,826 due on a $480,000 Hurricane Agnes flood loan to Canoe Manufacturing Co. (Exhibit #7)

   c. Commonwealth of Pennsylvania - approx. $392,915.00 (Canoe Manufacturing Co. taxes). (Exhibit #23)

Thus there was NO CONCEIVABLE WAY for the United States to collect FULL PAYMENT, and they were well aware of the situation.

6. The 433D AGREEMENT between the IRS and M. Robert Ullman regarding the reduction of the monthly payments in the event that the PBGC followed through with their intention to reduce the monthly pension paid M. Robert Ullman, was BOTH ORAL AND WRITTEN.

   In the 433D Agreement, signed on Jan. 25, 1995, Agent Clarke, upon agreement, inserted into "ADDITIONAL CONDITIONS": "Agreement will be re-evaluated on or about 1-26-97".

   Agent Clarke was made aware of the PBGC intention when he first became involved in the case (September 1993).

   At the signing on January 25, 1995, M. Robert Ullman insisted that he was not satisfied with the comment, "I give you my word that any PBGC reduction would automatically guarantee a like amount of reduction." He insisted upon a review guarantee by Jan. 25,1997, which Agent Clarke accepted. It was Agent Clarke who asked M. Robert Ullman "When will you know about the possible reduction?" and M. Robert Ullman stated "in 2 years", this being an outside date.

7. The IRS knew, on March 9, 1989, the EXACT DATE that M. Robert Ullman "lost control' of Canoe Manufacturing, but REFUSED to amend the $80,430.47 assessment for the first and second quarters of 1989 until May 22, 2000. (Exhibit #8) IT TOOK 11 YEARS TO FINALLY ISSUE A CREDIT OF $31,308.96, but with interest the debt is now $104,835.52.

The Counterclaim Plaintiff offers the following

documents as evidence to show the 11-year struggle:

Feb.25, 1999 - M. R. Ullman. to Romito (Exhibit #9)

Aug. 1, 1999 - M. R. Ullman to Romito (Exhibit #10)

Nov. 2, 1999 - M. R. Ullman to Agent Clarke (Exhibit #11)

Nov. 3, 1999 - M. R. Ullman to Agent Clarke and PRO Romito (Exhibit #12)

Nov. 8, 1999 - M. R. Ullman to Romito (Exhibit #13)

Nov. 16, 1999 - M. R. Ullman to Agent Bucci (Exhibit #14)

May 4, 2000 - Romito to Atty. Chernicoff (Exhibit #15)

The agents in the Reading, Pa. office of the IRS were continually made aware of the problems associated with the first and second quarters of 1989 (from 1993 onward).

THE COUNTERCLAIM PLAINTIFF, M. ROBERT ULLMAN, ANSWERS THE UNITED STATES SECOND MOTION FOR SUMMARY JUDGEMENT WITH THE FOLLOWING:

1. The tax liability of M. Robert Ullman is pursuant to two (2) assessments:

October 23, 1989 - $952,010.82
February 4, 1991 - $80,430.47 (later reduced to $49,121.51)

2. On May 22, 2000, the IRS finally agreed with the Ullman position of the date Ullman "lost control" of Canoe Manufacturing Co.

3. The reduction, in April of 2000,by M. Robert Ullman in his $600.00 monthly payment was because of the PBGC reduction, and HAD NOTHING TO DO WITH THE $31,308.96 ABATEMENT.

4. It was the Problem Resolution Officer, Louis Romito, who, on March 26, 2000, after numerous discussions between M. Robert Ullman and Mr. Romito, Agent Bucci, and IRS Attorney Peduzzi, ADMITTED THAT THE 433D DOCUMENT WAS AN AGREEMENT/CONTRACT. (Exhibit #16)

5. Every U. S. citizen, including the Counterclaim Plaintiff, expects his/her government to honor an agreement. IT IS AS BASIC OR FUNDA-MENTAL AS ONE CAN EXPECT FROM HIS/HER GOVERNMENT.

   The Taxpayers Bill of Rights #2, IRS Reform Act of 1998 clearly states that "THE IRS HAS THE BURDEN OF PROOF THAT ITS POSITION IN ITS CASE AGAINST THE TAXPAYER WAS SUBSTANTIALLY JUSTIFIED." (Section 7433)

   The court decision on January 29, 2002 only vacated the order of October 30, 2001, which referred only to the counterclaim of M. Robert Ullman; it did not affect the initial action against M. Robert Ullman to reduce a tax assessment to a judgement.

   On February 11, 2002 the court declared the first U.S. Motion for Summary Judgement and the Robert Ullman Motion for Summary Judgement a "moot".

6. THE ORIGINAL DEFENSE OF M. ROBERT ULLMAN REGARDING THE GOVERNMENT ACTION AND THE "7433" CLAIM FOR UNAUTHORIZED COLLECTION IS THE ISSUE AT HAND.

7. The original agreement between M. Robert Ullman and Agent Clarke was originally oral, but confirmed in writing as part of the 433D Agreement signed on Jan. 25, 1995.

8. The "MATERIAL FACTS" as stated by the United States in the second motion for Summary Judgment are FACTUALLY INCORRECT, and the court should reject this motion for Summary Judgement. For example:

   a. Section III: "Such a written installment agreement allows the taxpayer to satisfy a tax liability by making scheduled periodic payments until the liability is paid in full (26-CFR #301-6159-1-(a) emphasis added).

      It is RIDICULOUS to even state that M. Robert Ullman could pay a **$1,627,884.00 debt** (and increasing) in FULL with $600.00 per month payments. It would take 271 months or 225 years (with accruing interest) to complete payments.

      The Statute of Limitations expiration date for the second assessment was Feb. 4, 2001.

   b. Section III: "The installment agreement is not a contract (pursuant to 26 USC 6159)."

> On May 28, 1999, Louis Romito, the Taxpayer Advocate, when referring to the 433D Agreement, wrote, "However, I agree with you that it (433 agreement) is sufficiently contract like that both parties to the agreement are bound by its terms as though it was a contract." (Exhibit #16)
>
> Mr. Romito was assigned to this dispute by Commissioner Rossotti.

An agreement to pay $600.00 per month or 27% of a taxpayer's monthly income was surely a CONSIDERATION to get the United States to release its lien upon M. Robert Ullman's monthly Social Security check (Exhibit #17) and PBGC pension payment (Exhibit #18).

In addition to the "Additional Conditions" that were added by Agent Clarke, the following STANDARD CONDITIONS WERE INCLUDED IN THE 433D AGREEMENT.

> "This agreement is based upon your current financial condition. It is subject to revision or termination if subsequently information required by the IRS reflects a change in your ability to pay."

Thus, if M. Robert Ullman suddenly found $2,000,000 or won a $35 million judgement against the Meridian Bank or won the Pennsylvania lottery, the U. S. Government would have every right to terminate or revise the 433D Agreement. It is a FACT that the United States had, in 1995, ISSUED A LEVY against any funds that were forthcoming from a Meridian settlement.

The claim against a FUTURE LEGAL DECISION against Meridian Bank was explicit in the IRS/Ullman negotiation in 1994-1995.

In 1993, the Internal Revenue Service was made aware of the Ullman action against Meridian Bank. In order to protect their (IRS) interests, the Service sent a NOTICE OF LEVY (Exhibit #19) to Attorney Robert Fellheimer, the Robert Ullman attorney (on contingency) in Schuylkill County (Pa.) to collect a $35 million claim against Meridian Bank.

The United States expected to get full payment if Robert Ullman were able to prevail in his Schuylkill County action.

In a letter dated October 24, 1994 to the District Director (Exhibit #20-21), M. Robert Ullman stated very clearly that IF THE SCHUYLKILL COUNTY ACTION WAS SUCCESSFUL THE IRS WOULD BE PAID IN FULL.

Thus the United States expected the 433D Agreement, which stated "it is SUBJECT to revision or termination if subsequent financial information required by the IRS reflects a change in your ability to pay" to prevail on the upside, but was unwilling to recognize their legal (by contract and law) obligation on the down side.

In 1996, 1997 and 1998, Kaye G. Ullman, spouse of M. Robert Ullman, suffered a loss exceeding $100,000 in her children's outlet store, but although the IRS was insistent in including Kaye Ullman's income in Robert Ullman's "ability to pay", they REFUSED TO CONSIDER THE HUGE LOSS. The Ullman tax returns for these years have already been submitted to this court.

Section IV

M. Robert Ullman never claimed that Agent Eugene

Clarke engaged in an illegal collection activity. However, M. Robert Ullman did charge THAT THE REFUSAL TO RECOGNIZE THE IRS REGULATION WAS ILLEGAL. M. Robert Ullman DID try to protect his economic welfare by arguing about the $600.00 payment AND HIS FAMILY REDUCTION IN INCOME.

It was the IRS who, in May of 2000 engaged in ILLEGAL ACTIVITY BY REFUSING TO HONOR A CONTRACT/AGREEMENT.

THE ONLY ISSUE IN THIS CASE IS THE FAILURE TO ALLOW A REDUCTION, FOR 8 MONTHS, IN THE $600.00 MONTHLY PAYMENT, A TOTAL REDUCTION OF $2,952.00, AN ILLEGAL ACTIVITY.

CONCLUSION

This case for the $2,952.00 is a very big deal, or so it seems. The Internal Revenue Service has been very reluctant to recognize or agree with certain provisions of the Taxpayers Bill of Rights and the IRS Restructuring Act of 1998, which was intended to eliminate the strong arm, intimidation tactics of the Collection Department of the Internal Revenue Service. One must read the congressional testimony proceeding passage of the 1998 Restructuring Act to understand the problem. (Exhibit #24)

This is "pay back time" caused by M. Robert Ullman's effort to solicit help from the U. S. Senate Finance Committee, in particular its chairman, Senator Roth (Exhibit #25). M. Robert Ullman has zero political power and has never contributed to a senate or presidential campaign.

THIS IS A CONSTITUTIONAL RIGHT!

It is a case of the Collection Department MAINTAINING POWER over the upstart Taxpayer Advocate (Problem Resolution Officer) whom they consider an unnecessary burden.

THERE CAN BE NO REASON FOR THE UNITED STATES (THE DEPARTMENT OF JUSTICE) TO SUBMIT FACTUALLY INCORRECT STATEMENTS IN THEIR CURRENT MOTION.

FINALLY...

THE 433D INSTALLMENT AGREEMENT IS A "CONTRACT" (BETWEEN THE UNITED STATES AND THE TAXPAYER). It is an agreement between two parties creating OBLIGATIONS that are enforceable or otherwise recogniz-able at law. It is not a mere "accommodation" or method for paying "in full" a debt due. It has "CONDITIONS" THAT REQUIRE both the taxpayer and the government to INCREASE OR DECREASE the amount being paid (thus the total amount) according to the income of the taxpayer (an obligation).

As it so states, "This agreement is based upon your current circumstances (on Jan. 25, 1995). It is SUBJECT TO [1] revision or termination if subsequent financial information required by the IRS reflects a change in your ability to pay".[2]

---

[1] "Subject to" - contingent on or under the influence of some later action (the increase or decrease in the ability to pay)

[2] The United States intentionally left out that paragraph in their motion. (Page 7)

The "SPECIAL CONDITIONS", inserted into the contract by the collection officer, was not an "oral agreement"; it was INSERTED to provide an OBLIGATION on behalf of the United States to make a reduction in the monthly payment IF the PBGC monthly payment was reduced. The collection officer was well aware of the POSSIBILITY, in 1994, of such a reduction.

The $600.00 payment was based upon current income (1994) and was not a mere method to collect in full a $1.6 million debt. It was a NEGOTIATED amount, first $400.00, then $1,000.00, and finally $600.00 (TO BE EXAMINED IN TWO YEARS).

The Pro Se litigant requests the court to reject the United States second Motion for Summary Judgment and allow this case to go to trial.

This Pro Se litigant does realize the huge burden he is undertaking and prays that the court will be patient and understanding in an upcoming trial. But this plaintiff will do his very best to present as uncomplicated an argument as possible.

Respectfully submitted,

M. Robert Ullman

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	CIVIL ACTION
Plaintiff	:	
v.	:	NO. 01-0272
	:	
M. ROBERT ULLMAN,	:	
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J. May 8, 2002

Presently before the Court is the United States' Motion for Summary Judgment on Defendant's counter-claim pursuant to 26 U.S.C. § 7433 alleging that the Internal Revenue Service (the "IRS") intentionally, recklessly or negligently violated the Internal Revenue Code in collecting taxes allegedly owed by him. Defendant, a pro se litigant, also moves for summary judgment on this same counter-claim. For the reasons stated below, the United States' Motion for Summary Judgment is granted and Defendant's

Motion for Summary Judgment is denied.

I. FACTS AND PROCEDURAL HISTORY

The United States initiated this proceeding on January 18, 2001 by filing a one-count complaint to reduce a tax assessment to judgment against M. Robert Ullman ("Ullman" or "Defendant"), for his unpaid tax liability. Defendant's tax liability stems from a February 4, 1991 trust fund recovery penalty assessment resulting from a determination that he was the responsible person for the employee withholding taxes of Canoe Manufacturing Co. Inc. for the first and second quarters of 1989.[1]

The IRS subsequently agreed to allow Ullman to pay his tax liability in installments. He first attempted to negotiate a $400.00 per month payment, which the IRS

[1] Defendant believes it is more accurate to describe his tax liability as two assessments: (a) October 23, 1989 in the amount of $925,010.88; and (b) February 4. 1991 in the amount of $80,430.47. For purposes of Defendants counterclaim pursuant to 26 U.S.C. § 7433, it is irrelevant in what manner the penalty was assessed.

rejected, contending that Ullman had the ability to make payments of $1,000.00 per month. Eventually, Ullman and the IRS entered into an installment agreement on January 25, 1995, which required Ullman to make monthly payments of $600.00. According to Ullman, during the negotiation process, he made known to the Revenue Officer handling his case, Eugene Clarke ("Clarke") that a reduction in his pension payments was imminent. Clarke inquired, "When could the reduction occur?" Ullman answered, "Within two years." Clarke responded, "If that occurs, we will reduce your monthly payments by a like amount."

In addition to Ullman's complaints that he could not afford $600.00 monthly payments, throughout the installment negotiation process, he consistently maintained that he was not responsible for the tax debt. Ullman claimed that Meridian Bank maintained third party responsibility for the tax debt, because Meridian Bank controlled funds providing payment for wages of Canoe Manufacturing employees pursuant to an agreement between Meridian Bank and

Ullman. Ullman also claimed that the IRS had miscalculated his ability to pay monthly installment amounts by including his wife's income in the financial statement analysis and by failing to take into account his pension reduction.

Despite Ullman's dissatisfaction with the IRS' handling of his case, he consistently and fully made monthly payments to the IRS as provided for under the January 25, 1995 installment agreement. However, after approximately five years of timely payments, Ullman reduced his monthly $600.00 installment payment to the IRS when the Pension Benefit Guarantee Corporation finally reduced his pension in March, 2000. The IRS construed Ullman's conduct as a unilateral reduction in monthly installment payments without authorization from the IRS. Consequently, the IRS terminated the installment agreement. See 26 U.S.C. § 6159(b) (4) (A) (authorizing termination of an installment agreement when a taxpayer fails to pay any installment at the time such installment payment is due). Ullman main-

tains that Revenue Officer Clarke authorized such reduction at the time that the installment agreement was executed.

Defendant filed an answer to the United States' complaint and a counterclaim against the IRS on February 8, 2001. In addition to his other counterclaims, Defendant alleged that the IRS violated a signed installment agreement.

On October 30, 2001, the Court entered an Order granting the United States' first Motion for Summary Judgment, entering a judgment in favor of the United States and against Defendant for trust fund recovery penalty taxes for the first and second quarters of 1989 in the amount of $112,010.95 plus statutory additions accruing according to law from May 1, 2001, and dismissing Defendant's counterclaims against the United States. The Court dismissed Defendant's counterclaim for unauthorized collection activities pursuant to 26 U.S.C. § 7433 (the subject of the instant motion) as time barred by the two year statute of limitations. See 26 U.S.C. § 7433(d) (3) (setting two year limitations period).

Subsequently, Defendant filed a Motion to Reconsider the Court's Order dated October 30, 2001, which the United States opposed. On January 29, 2002, the Court signed an Order vacating the Order dated October 30, 2001 with respect to Defendant's counterclaim alleging unauthorized collection activities in violation of 26 U.S.C. § 7433 and reinstating Defendant's counterclaim. In its decision, the Court relied on Defendant's allegations that the installment agreement he entered into with the IRS may have permitted him to reduce his monthly installment payments to the IRS. As noted above, Ullman alleges that during negotiation of the January 25, 1995 installment agreement he notified Revenue Officer Clarke that he expected a reduction in his monthly pension benefits within the next two years and that Clarke told him that if his pension benefits were reduced, he could reduce his monthly installment payment by a like amount. Ullman contends that he relied on this alleged oral agreement when he reduced his monthly installment payment. Based upon these allegations, the Court, in its

January 29, 2002 decision, reasoned that:

> If the oral terms, to which Defendant refers, became part of the installment agreement and entitled Defendant to reduce his monthly installment payments to the IRS once his pension payments were similarly reduced, it does not appear that the IRS had any authority to terminate Defendant's installment agreement. The Court assumes that without such authority, the IRS' act of unjustifiably terminating a valid installment agreement would be in disregard of a statute of the Internal Revenue Code or a regulation promulgated thereunder in connection with the collection of Federal tax in violation of 26 U.S.C. §)433.

The parties now bring cross-claims for summary judgment with respect to Defendant's counterclaim alleging unauthorized collection activities in violation of 26 U.S.C. § 7433.

II. STANDARD

A motion for summary judgment shall be granted if the Court determines "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "The non-movant's allegations must be taken as true and, when

these assertions conflict with those of the movant, the former must receive the benefit of the doubt." Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). In addition, "[i]nferences to be drawn from the underlying facts contained in the evidential sources ... must be viewed in the light most favorable to the party opposing the motion." Id.

III. DISCUSSION

Under 26 U.S.C. § 7433(a), a cause of action lies where an IRS employee recklessly or intentionally disregards any provision of the Internal Revenue Code in connection with its tax collecting activities. Under § 7433(b), the taxpayer can recover his "actual, direct economic damages sustained" as a "proximate result" of an IRS employee's improper actions under § 7433(a).

In support of his counterclaim, Ullman asserts a myriad of complaints, many of which were addressed in this Court's Memorandum and Order dated October 30, 2001,

granting summary judgment to the United States. The Court will limit its examination to those issues which pertain to Ullman's counterclaim pursuant to 26 U.S.C. § 7433 as framed in the Court's Order granting Defendant's Motion for Reconsideration dated January 29, 2002.

Ullman's primary argument is that the January 25, 1995 installment agreement, entered into between himself and the IRS, was a contract providing for certain terms and conditions, which were not honored by the IRS. Specifically, Ullman alleges that the IRS did not honor (1) the oral agreement entered into contemporaneously with the written agreement, allowing him to reduce his monthly payments to the IRS as soon as his pension benefits was similarly reduced; (2) the standard condition written on the face of the document stating:

> This agreement is based on your current financial circumstances: It is subject to revision or termination if subsequent financial information required by IRS reflects a change in your ability to pay;

and (3) the statement appearing in the comments section on the face of the installment agreement, "Agreement will be reevaluated on or about 1-26-97."

Ullman states that the (1) IRS terminated the installment agreement when he reduced the monthly installments after his pension was reduced; (2) the IRS never revised the installment agreement despite information reflecting a change in his ability to pay and despite repeated requests; and (3) the installment agreement was never reevaluated on 1-26—97 or at any time. Ullman argues that these infractions, culminating in the IRS' termination of the installment agreement, were breaches of a binding contract and constitute unauthorized collection activities in violation of 26 U.S.C. § 7433.[2] In support of his breach of contract theory, Ullman points to a letter written by Mr. Louis Romito ("Romito") of the Taxpayer Advocate in which Romito stated "I agree with you that [the installment agreement] is sufficiently contract like that both parties to the agreement are bound by its terms as though it was a

contract."

It is axiomatic that before a contract may be found, all of the essential elements of a contract must exist, including consideration. 8 P.L.E. Contracts § 9 (1971). The requirement of consideration, of course, is nothing more than a requirement that there be a bargained for exchange. Estate of Beck, 414 A.2d 65, 68 (Pa. 1980). There can obviously be no such bargained for exchange if one of the parties is already legally bound to render the performance promised. Chatham Communications. Inc. v. General Press Corp., 344 A.2d 837, 840 (Pa. 1975); Cohen v. Sabin, 307 A.2d 845, 84g (Pa. 1973).

Ullman argues that his agreement to pay $600.00 per month, or 27% of his monthly income, was more than sufficient consideration to form a contract. While the Court recognizes the significant burden $600.00 monthly payments

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[2] Although Ullman has not pointed to a specific Internal Revenue code provision that the IRS intentionally, recklessly or negligently violated as required under 27 U.S.C. 7433, the court assumes that his allegations, if true, would constitute the unlawful termination of the installment agreement in violation of 26 U.S.C. § 6159.

placed on Ullman, his agreement to make the monthly payments as provided for under the installment agreement cannot constitute the required consideration because those monthly payments were credited against a tax liability for which Ullman was already obligated. Prior to the execution of the January 25, 1995 installment agreement, Ullman's tax liability was established through a trust fund recovery penalty assessment resulting from a determination that he was the responsible person for the employee withholding taxes of Canoe Manufacturing Co. Inc. for the first and second quarters of 1989. It was only because of the pre-existing tax liability and the IRS' assumption that a monthly payment arrangement would facilitate the collection process, that the IRS agreed to accommodate Ullman and allow for payment of the assessment on an installment basis

Thus, although an agreement in the general sense, the installment agreement is not a contract in the sense that breach of its terms gives rise to a common law breach of contract action because of the absence of consideration on the part of Ullman. The IRS would no more have a claim

against Ullman for breach of contract had he missed a monthly payment to the IRS as Ullman now assumes he has against the United States for allegedly failing to honor certain terms of the installment agreement. Pursuant to the installment agreement, the IRS allowed Ullman to satisfy his pre-existing tax liability over time. For purposes of 26 U.S.C. § 7433 it is irrelevant whether Revenue Officer Clarke orally promised Ullman that he could reduce his payments once his pension benefits were reduced because breach of this alleged oral contract does not constitute a violation of the Internal Revenue Code and therefore, is not cognizable as an unauthorized collection activity for which a cause of action would lie under 26 U.S.C. § 7433.

In contrast to the legal concept of a binding contract, which requires consideration, an installment agreement operates pursuant to statute. See 26 U.S.C. § 6159. The IRS is authorized to enter into a written agreement allowing payment of taxes on an installment basis if it is determined that the agreement will facilitate collection. 26 U.S.C. § 6159(a). 26 C.F.R. § 301.6159-1.(a). Thus, oral agreements are not

contemplated by the statute. Accordingly, oral agreements would not be incorporated into the terms of a written installment agreement.

An installment agreement may be terminated or modified for a variety of reasons including when the taxpayer fails to pay any installment at the time the payment is due under the agreement. 26 U.S.C. § 6159(b) (4). Once an installment agreement has been executed, the IRS may only terminate the agreement if a condition enumerated in the statute is present. Termination for any reason other than those enumerated in the statute would be in violation of 26 U.S.C. § 6159 and could perhaps give rise to a cause of action for unauthorized collection activities under 26 U.S.C. § 7433. In this case, however, the January 25, 1995 installment agreement required Ullman to make a $600.00 payment to the IRS each month. Starting in May of 2000, Ullman failed to do so and made payments of only $224.40 per month. Because Ullman failed "to pay an installment at the time such installment payment [was] due," the IRS was authorized, pursuant to 26 U.S.C. 6159(b) (4) (A), to terminate the

installment agreement and take other lawful action to ensure that it would received payment on Ullman's tax liability.

In sum, there is no legal contract for which breach of its terms would give rise to a cause of action because the lack of consideration on the part of Ullman prevents the installment agreement from being treated as such. Furthermore, breach of a contract does not constitute a violation of the Internal Revenue Code, a requirement under the statute which Ullman brings his counterclaim. Lastly, the IRS acted properly and pursuant to statute in terminating the installment agreement when Ullman failed to make the full $600.00 payment as provided under its terms.

As tor Ullman's complaint that the IRS refused to reevaluate his monthly payments on 1-26-97, as provided on the face of the installment agreement, Ullman argues that this backs up, in writing, Revenue Officer Clarke's oral promise that his installments would be reduced once his pension benefits were reduced because that was the approximate date that Ullman anticipated a reduction in his

pension. A taxpayer may request that the IRS alter, modify or terminate the terms of the installment agreement because of a change in the taxpayer's financial circumstances. 26 U.S.C. § 6159(b)(3). However, Ullman' s change in financial conditions, i.e., the reduction in pension benefits, did not occur until March 2000. Thus, any obligation on the part of the IRS to reevaluate Ullman' s installment payments on 1-26-97 was not yet triggered because the changed financial conditions of reduced pension benefits had not yet occurred. With respect to the installment agreement's boilerplate language that it is "subject to revision or termination if subsequent financial information required by IRS reflects a change in your ability to pay," IRS calculations repeatedly show that any revision would require Ullman to pay more than the $600.00 which was required under the January 25, 1995 installment agreement, even after March 2000 when his pension was finally reduced.

Ullman also argues that the installment agreement he executed was not the statutory instrument described in 26 U.S.C. § 6159, but rather an offer in compromise. An offer

in compromise is a contractual agreement between the IRS and a taxpayer under which the taxpayer agrees to pay a specified amount in full settlement of assessed tax liabilities. See 26 U.S.C. § 7122(a). In support of this contention, Ullman notes that it would take approximately 225 years to pay off his total tax liability of $1,627,884.69 by making $600.00 monthly payments. Therefore, given this anomalous period of time, Ullman argues that the IRS never intended to collect the full amount of his tax liability but rather was willing to accept a part of the liability in full settlement of the assessed liability.

Ullman's arithmetic, which could just as easily exhibit the generous accommodation the IRS made for Ullman, does not establish that the January 25, 1995 installment agreement was actually an offer in compromise. In fact, the record establishes that the agreement should not be construed as anything other than an installment agreement.

First, the document was written on an IRS Form 433-D, entitled "Installment Agreement." Second, the agreement provides that "$600.00 will be paid no later than the 25th of

each month thereafter until the total liability is paid in full." (emphasis added) . Further, there is evidence that Ullman twice attempted to enter into an offer in compromise and settle with the IRS for a lesser amount than that of his total tax liability, but the IRS did not accept his offers because of the insufficiency of the amount Ullman offered.

Therefore, because of the lack of supporting evidence suggesting that the January 25, 1995 agreement was actually an offer in compromise and the evidence which establishes that the document was indeed an installment agreement, the Court holds that the document executed by Ullman on January 25, 1992 was an installment agreement.

To the extent that Ullman argues that the IRS' refusal to accept Ullman's offers in compromise is an unauthorized collection activity, Ullman's argument fails. Compromising tax liabilities is a purely discretionary activity and will not give rise to a claim for intentional, reckless or negligent violation of the Internal Revenue Code. See Addington v. United States, 75 F. Supp. 2d 520, 524 (S.D. W. Va. 1999).

IV. CONCLUSION

For the reasons stated above, the United States' Motion for Summary Judgment on Defendant's counter-claim pursuant to 26 U.S.C. § 7433 alleging that the IRS engaged in unauthorized collection activities is granted and Defendant's counterclaim is dismissed.

An appropriate Order follows.

NO. 02-2752

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,
APPELLEE

v.

M. ROBERT ULLMAN,

APPELLANT

PETITION FOR REHEARING OF THE "JUDGMENT" ENTERED ON JANUARY 22, 2003

THE COURT OPINION OF JANUARY 22, 2003 CONTAINS FIVE ERRORS OF "GENUINE ISSUES OF MATERIAL FACTS" AND ONLY CONFIRMS THE ERRORS IN THE ARGUMENT OF THE UNITED STATES OF AMERICA IN THEIR MOTION FOR SUMMARY JUDGMENT.

M. ROBERT ULLMAN - PRO SE
1616 HILL ROAD
READING, PA. 19602
PHONE: 610-375-4896

THE ISSUE

THERE ARE 5 (FIVE) ERRORS OF GENUINE ISSUES OF MATERIAL FACT IN THE "OPINION" FILED ON JANUARY 28, 2003 BY THE UNITED STATES COURT OF APPEALS.

SUMMARY JUDGMENT PROCEDURE IS A METHOD FOR PROMPTLY DISPOSING OF ACTIONS IN WHICH THERE IS NO GENUINE (ACTUAL OR TRUE) ISSUE AS TO ANY MATERIAL FACT (A FACT THAT IS SIGNIFICANT OR ESSENTIAL TO THE ISSUES OR MATTER AT HAND). (RULE 59)

THE BASIC IRS RULES

Rule [5.14] 1.2 IRS Installment Handbook - Installment Agreements:

"Internal revenue Code Section **6159(a)** provides that Installment Agreements must fully Pay taxes before the Collection Statute Expiration Date (CSED)."

"Installment Agreements are arrangements whereby the Internal Revenue Service allows taxpayer to pay liabilities over time. ONLY AGREEMENTS THAT PROVIDE FOR FULL PAYMENT OF LIABILITY MAY BE GRANTED. During the course of agreements, penalty and interest continue to accrue."

Rule [5.14] 1.7 "CSED - Collection Statute Expiration Date":

"By policy, the Internal Service limits the length of installment agreements to the 10 year statutory collection period. (CSED)

THUS
IF THE 433D AGREEMENT IS TO QUALIFY AS AN "INSTALLMENT AGREEMENT" IT HAD TO PROVIDE FOR FULL PAYMENT OF THE $1,627,884.69 BEFORE THE FINAL CSED DATE OF FEBRUARY 4, 2001.

The debt as of January 25, 1995 (exhibit #2) (433D Agreement):

1. $ 952,010.88 (period ending Dec. 31, 1988) CSED date 10/23/99 (Exhibit #3)
2. $ 80,430.47 (period ending June 30, 1989) CSED date 2/4/01 (Exhibit #4)
3. $ 595,442.94 (interest to date)
   $1,627,884.69 total (Jan. 25, 1995)
   (growing at the rate of $103,244 per year (10% X 1,032,440). By Feb. 4, 2001 the total amount due after $600.00 monthly payment would be $2,300,192.

On September 18, 2000 the IRS corrected their error and changed the $80,430.47 to $45,651.51 (Exhibit #5). The IRS agreed that M. Robert Ullman was not the responsible party for the taxes due by Canoe Manufacturing Co. for the period from March 15, 1989 to June 30, 1989. (The **trustee was in charge.**)

The tax return for the period ending March 31, 1989 was filed in August, 1989 by the U. S. Trustee, and the IRS made an initial assessment against the U. S. Trustee and it took until Feb. 4, 1991 to correct the mistake and assess M. Robert Ullman. The IRS mistake artificially extended the CSED on the $80,430.47 (corrected to $45,651.51) by 14 months. If assessed correctly, the CSED date for the $80,430.47 would have expired prior to the 2001 action by the United States against M. Robert Ullman.

THE ERRORS

#1. Court Opinion: "On February 4, 1991 the IRS made an assessment against Ullman as a responsible person under #6672 with respect to unpaid employment taxes of Canoe Manufacturing Co. for the first and second quarter of 1989 in the amount of $80,430. The IRS subsequently abated $31,309 of the assessment, which reduced it to $49,121.00."

"The Installment Agreement also covered an assessment made against Ullman on October 23,1989 for the last two quarters of 1988, with a balance of $952,011. The October assessment is not an issue in the instant appeal because the government did not seek to reduce the assessment to judgment."

The Material Difference in Fact:

A. The 433D assessment covered the periods from Jan. 1, 1987 thru June 30, 1989. The ASSESSMENTS were made on two different dates - Oct. 23, 1989 and Feb. 4, 2001. (Exhibits 3 & 4).

B. **THE REASON THAT THE $952,011 WAS NOT INCLUDED IN THE UNITED STATES ACTION WAS BECAUSE THIS ACTION WAS INITIATED JANUARY OF 2001, 14 MONTHS AFTER THE CSED DATE ON THE $952,011.**

The only remaining amount was the $80,430, which was corrected on September 18, 2000 to $45,651. (Exhibit #5)

#2. Court Opinion: "After negotiating with the IRS, Ullman

entered into a written installment agreement which provided that he was required to make monthly payments of $600.00 UNTIL THE TAX LIABILITY WAS SATISFIED."

The Material Difference in Fact:

A. The $600.00 monthly payment could not pay an assessment of $1,627,884, growing at the rate of $103,244 per year in the time period ending Feb. 4, 2001.

The $7,200.00 per year payment would take an "INFINITE PERIOD" for payment as it was growing faster than it was being reduced!

The IRS agreed that the CSED dates were Oct. 23, 1999 and Feb. 4, 2001.

1.) January 6, 1998 - letter from District Director (Exhibit #6):
"The collection Statute of Limitations on the Trust Fund recovery penalty assessed in the amount of $952,010 will expire on October 23, 1999, while the statute on the penalty that was assessed in the amount of $80,430.47 is scheduled to expire on February 4, 2001."

#3. Court Opinion: "Ullman made the $600.00 payments until May, 2000 when he began paying approximately $225.00 per month. He believed that he could unilaterally reduce his payment on the installment agreement because his pension had reduced in a matter unrelated to this case."

#4. Court Opinion: "Specifically, Ullman claimed that he

had reached an oral agreement with an IRS agent when he signed the Installment Agreement that authorized him to reduced his monthly payments if his pension was reduced."

The Material Difference in Fact:

A. The IRS (Agent Clarke) and M. Robert Ullman began negotiating payment agreement in 1991.

B. The IRS (Agent Clarke) was provided with all of the requested materials:
(1.) tax returns of Kaye G. and M. Robert Ullman
(2.) all expenses of Kaye G. and M. Robert Ullman.

C. Negotiation with the Pension Benefit Guarantee Corp. regarding the possible reduction in the M. Robert Ullman monthly pension was in progress. The PBGC claimed that as a principal officer of the corporation Robert Ullman was not entitled to full benefits. A final determination was anticipated.

D. M. Robert Ullman's net income in 1994 included a monthly PBGC payment of $1,016.44 **($12,197.28 or 48% of Robert Ullman's gross income of $26,000).**

E. Agent Clarke and his superior DETERMINED that M. Robert Ullman could pay, and must pay, $600.00 per month. THIS DETERMINATION WAS BASED UPON THE IRS FORMULAE IN USE IN 1994, WHICH INCLUDED GROSS INCOME OF KAYE AND ROBERT ULLMAN LESS IRS ALLOWABLE EXPENSES.

F. Agent Clarke was fully aware of all of Robert Ullman's negotiations with the PBGC and his action against Meridian Bank.

G. Prior to signing the 433D Agreement on Jan. 25, 1995, Robert Ullman asked agent Clarke "What happens if the PBGC reduces their monthly payment?"

Agent Clarke answered, "We will reduce the monthly payment by a like amount."

Ullman asked, " How will I know that will happen?"

Clarke answered, "Read the condition of the contract." (Exhibit #7, which read "This agreement is based upon your current financial circumstances; it is subject to revision or termination if subsequent financial information required by the IRS reflects a change in your ability to pay.") "Trust me, it will happen."

Clarke also added, "To give you more confidence, I will insert 'agreement will be reevaluated on or about 1-26-97.'"

M. Robert Ullman signed the agreement only after Agent Clarke VERBALLY read aloud the conditions and typed in the re-evaluation feature.

On March 26, 1999, Mr. Romito, the Taxpayer Advocate, wrote re. the 433D Agreement (Exhibit #8): "However, I agree with you that it is sufficiently contract-like that both parties to the agreement are bound by its terms as though it was a contract."

IT IS IMPORTANT TO NOTE THAT THE IRS AND DEPARTMENT OF JUSTICE HAS NEVER BEEN WILLING TO SUPPLY ANY AFFIDAVIT, TESTI-

MONY OR OPINION FROM AGENT CLARKE REGARDING THESE EVENTS OF JANUARY 25, 1995.

H. March 10, 2000 (Exhibit #9) - the PBGC informed M. Robert Ullman that they were reducing his monthly pension from $1,016.44 to $641.44 or a **$375.00 reduction.**

I. April 3, 2000 (Exhibit #10) and April 17, 2000 (Exhibit #11) M. Robert Ullman informed the IRS (Mr. Bucci and Mr. Romito) about the $375.00 reduction and he REQUESTED a like amount reduction in his monthly payment. (THE LAST CSED DATE WAS 2/3/01.)

J. The IRS refused to honor their written agreement, and ONLY THEN did M. Robert Ullman reduce his monthly payments from $600.00 to $225.40 (a $375.00 reduction).

K. M. Robert Ullman continued to make his monthly payment of $225.40 until January of 2001 when the IRS brought the action in U. S. District Court.

L. THE 8 PAYMENTS OF $225.40 (UNTIL THE CSED DATE) AMOUNTED TO A SAVINGS TO ULLMAN OF $3,000.00.

M. On April 10, 2000 the Taxpayer Advocate wrote: "The COSED will expire in February 2001. It may be unfair to the TP and counterproductive for the government to hold the line, perhaps extending the statute and litigation for $4,500.00 we would not realize in a $200,000 debt we will write off in 11 months." (Exhibit #12)

"Reject Ullman proposal of April 3, 2000 (Exhibit #10) as frivolous since we have pointed out many times that his current $600.00 was far below acceptable when it was established, irrespective of an alleged promise of reduction the ... revenue officer who established the agreement."

It is important to note that the $600.00 was the amount that the IRS requested Ullman to pay. It is also important to note that 3 months earlier the IRS had proposed a $400.00 monthly payment. However, the IRS supervisor rejected the $400.00 which was established by his fellow agent. (Exhibit #19)

#5. Court Opinion

"The court reasoned that the agreement was not a contract because of the absence of consideration on the part of Ullman. Moreover, the agreement operated pursuant to statute. The statute does not authorize the IRS to execute oral agreements. Thus, even if the IRS did breach oral agreements, that breach would not constitute a violation of Internal Revenue Code. See 26 U.S. C. 6159."

The Material Difference in Fact

A. The 433D Agreement signed by M. Robert Ullman and prepared by Agent Eugene Clarke DOES NOT QUALIFY AS AN INSTALLMENT AGREE-MENT BECAUSE IT NEVER WAS INTENDED (INTENT) TO PAY THE TOTAL TAX DEBT IN FULL. It was at best a "stop gap" agreement to be rewritten when the PBGC made their final determination Oct. 4, 2002.

B. Opinion of Attorney Jack Linton on October 4,

2002, the attorney who represented M. Robert Ullman until November of 1994.
Attorney Linton wrote: (Exhibit #13)

(1) "We entered into good faith negotiation with the Service and had arranged an agreement with Mr. Clarke at $400.00 per month to be reviewed at the end of one year based upon your concerns about possible reductions in your pension payments."
(referring to the October, 1994 original 433D Agreement (Exhibit #19).

(2) "There is no doubt that all concerned were aware that this was a STOP GAP AGREEMENT pending the outcome if your litigation with Meridian Bank since, based upon your income and monthly payments that you would be making, there was no reasonable possibility of the liability assessed by the Internal Revenue Service being paid in full."

C. ON OR ABOUT JANUARY 25, 1995 AGENT EUGENE CLARKE WROTE (F.O.I. REQUEST): (Exhibits 14 & 15)

ITEM 6. "M. Robert Ullman, in his capacity as stockholder and/or his own behalf has instituted a lender liability action in the Schuylkill County courts against Meridian Bank. This action has just entered the discovery stage. Levys have been served on Meridian and its counsel. Recovery is question-able at best and certainly not to be anticipated in the near future."
Item 7. "Trust Fund recovery penalty assessments have been made against M. Robert Ullman in the amounts of $952,010.88 and $80,430.47 on October 23, 1989 and Feb. 4, 1991

respectively. Mr. Ullman entered into an installment agreement and is paying $600.00 per month on the liabilities. THERE IS NO POTENTIAL FOR FULL PAYMENT FROM MR. ULLMAN OTHER THAN THE ACTION DESCRIBED IN ITEM 6."

Note: Mr. Clarke was referring to Item 6 - the Ullman action against Meridian Bank. It must be noted that the Schuylkill County Court ruled in favor of Meridian Bank on a bank motion for Summary Judgment on December 22, 2000 (Exhibit #16).

D. The "consideration" was:

(1.) The IRS withdrew their attachment on M. Robert Ullman's monthly social security and pension payments. (Exhibit Nos. 17 and 18)

(2.) M. Robert Ullman agreed to pay $600.00 per month until the expiration date (CSED) of February 4, 2001,with exception.

(3.) Robert Ullman agreed that IF HE WAS SUCCESSFUL in his action against Meridian Bank, the debt would have been paid in full. It was Ullman who provided the full details of the Ullman/Canoe action against Meridian Bank and Atty. Joseph Jones. The IRS had issued Notice of Levy to Meridian Bank and the Ullman attorney, Robert Fellheimer, on October 13, 1993. (Exhibit #21)

IN CONCLUSION

The evidence, exhibits provided were all included in the appeal by M. Robert Ullman to the District Court ruling

M. ROBERT ULLMAN PRAYS THAT THE COURT WILL ACCEPT HIS PETITION FOR REHEARING and will rule favorably in this matter and allow this case to be a jury trial in Federal District Court.

Respectfully submitted,

M. Robert Ullman

EXHIBITS

#1	The court order and opinion of Jan. 28, 2003
#2	The Jan. 25, 1995 422D Agreement
#3	December 31, 1988 assessment $952,010.88
#4	June 30, 1989 assessment - $80,430.47
#5	September 18, 2000 Corrected assessment - $45,651.51
#6	Jan. 6, 1998 Letter from District Director
#7	Enlarged conditions of the Jan. 25, 1995 433D Agreement
#8	March 20, 1999 letter from Mr. Romito (Taxpayer Advocate)
#9	March 10, 2000 - PBGC letter re. reduction
#10	April 3, 2000 Ullman letter to Taxpayer Advocate
#11	April 17, 2000 Ullman letter to Taxpayer Advocate
#12	April 10, 2000 Notes of Taxpayer advocate
#13	October 4, 2002 Opinion of Atty. Jack Linton
#14	Nov. 30, 1994 - Memo of Agent Eugene Clarke
#15	Jan. 25, 1995 - Memo of Agent Eugene Clarke
#16	Dec. 22, 2000 - Schuylkill County Court order
#17	November 7, 1994 - Social Security attachment
#18	January 12,1995 - Pension attachment
#19	October 14, 1994 - First 433D Agreement (note re. "full payment")
#20	May 8, 2002 - District Court order

#21 October 13, 1993 - Notice of Levy to Meridian Bank and Attorney Fellheimer

#22 February 11, 2002 - U. S. Motion for Summary Judgment

(3)

Supreme Court, U.S.
FILED

No. 03 344 JUN 26 2003

IN THE

Supreme Court of the United States

M. ROBERT ULLMAN,

Petitioner

v.

UNITED STATES OF AMERICA

On Petition For Writ of Certiorari
To The United States District Court
for the Eastern District of Pennsylvania
and
The U. S. Court of Appeals for the Third Circuit

ADDITIONAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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12 pp

TABLE OF CONTENTS

pages 64-73	Opinion and Judgment – U. S. Court of Appeals, January 28, 2003
page 74	Order of Sur Petition for Panel Rehearing - U. S. Court of Appeals, April 14, 2003

UNREPORTED- NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-2752

UNITED STATES OF AMERICA

v.

ROBERT M. ULLMAN,
Appellant.

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 01-ev-00272)
District Judge: Honorable Ronald L. Buckwalter

Submitted Under Third Circuit LAR 34.1(a)
January 22, 2003

Before: NYGAARD, GREENBERG and COWEN,
Circuit Judges

(Filed: January 28, 2003)

OPINION

PER CURIAM

Pro se appellant Robert M. Ullman timely appeals the District Court's entry of summary judgment in favor of the United States in the amount of $112,010.95 plus statutory additions accruing according to law from May 1, 2001, the District Court's entry of summary judgment in favor of the United States on his counterclaim, and the District Court's order denying his timely motion for reconsideration of the order granting summary judgment on the counterclaim. We will affirm.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review over a District Court's grant of summary judgment and review the facts in the light most favorable to the party against whom summary judgment was entered. See Coolspring Stone Supply. Inc. v. American States Life Ins. Co., 10 F.3d 144, 146 (3d Cir. 1993). Summary judgement is proper if there is no genuine issue of material fact and if, viewing the facts in the light most

favorable to the non-moving party, the moving party is entitled to judgment as a matter of law. Fed. R.Civ.P. 56(c). See Celotex Corp. v. Catrett, 477 U. S. 317 (1986).

On February 4, 1991, the Internal Revenue Service ("IRS") made an assessment against Ullman as a responsible person under 26 U.S.C. § 6672 with respect to the unpaid employment taxes of Canoe Manufacturing Co. for the first and second quarters of 1989 in the amount of $80,430. The IRS subsequently abated $31,309 of the assessment, which reduced it to $49,121.

After negotiating with the IRS, Ullman entered into a written installment agreement which provided that he was required to make monthly payments of $600 until the underlying tax liability was satisfied.[1] Ullman made the

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[1] The installment agreement also covered an assessment made against Ullman on October 23, 1989, for the last two quarters of 1998, with a balance due of $952,011. The October assessment is not at issue in the instant appeal because the Government did not seek to reduce that assessment to judgment.

$600 payments until May 2000, when he began paying approximately $225 per month. He believed that he could unilaterally reduce his payment on the installment agreement because his pension had been reduced in a matter unrelated to this case. The IRS terminated the installment agreement because Ullman failed to pay the required installments when due. 26 U.S.C. § 61 59(b)(4)(A).

After providing notice of the termination and its intent to collect the unpaid taxes by levy, the Government filed a complaint in the United States District Court for the Eastern District of Pennsylvania to reduce the February 4, 1991 assessment against Ullman to judgment. Ullman filed an answer and counterclaim for damages for wrongful tax collection pursuant to 26 U.S.C. § 7433, claiming that the IRS violated the installment agreement and failed to provide certain advice of the Chief Counsel under 26 U.S.C. § 6110 (i)(4)(B). The Government filed a motion for summary judgment and Ullman filed a cross-motion for summary

judgment. By order entered October 31, 2001, the District Court granted summary judgment in favor of the Government. The District Court held that: (1) the Government's assessment against Ullman was valid and timely; (2) the Government was not required to collect the withholding taxes from a third party; (3) Ullman's counterclaim for damages under 26 U.S.C. § 7433 was time-barred; and (4) it lacked jurisdiction over Ullman's section 611 0(i)(4)(B) claim because the statute provides that the Court of Federal Claims has exclusive jurisdiction over such an action, see 26 U.S.C. § 6110 (j)(l)(B). Ullman filed a timely motion for reconsideration and the District Court granted it. The court reinstated Ullman's section 7433 counterclaim for wrongful tax collection because the Government terminated the installment agreement in June 2000, less than two years before bringing suit and thus within the two-year statute of limitations.

The Government then filed a second motion for

summary judgment on the counterclaim, contending that the installment agreement was properly terminated pursuant to 26 U.S.C. § 6159(b)(4), which provides that the IRS may terminate an installment agreement if the tax-payer fails to make the required payments when due. Ullman filed a cross-motion for summary judgment, arguing that the installment agreement was a contract which the Government breached when it terminated the agreement. Specifically, Ullman claimed that he had reached an oral agreement with an IRS agent when he signed the installment agreement that authorized him to reduce his monthly payments if his pension was reduced.

The District Court, by order entered May 8, 2002, granted the Government's summary judgment motion and denied Ullman's motion. The court reasoned that the agreement was not a contract because of the absence of consideration on the part of Ullman. Moreover, the agreement operated pursuant to statute. The statute does not

authorize the IRS to enter into oral agreements. Thus, even if the IRS did breach an oral agreement, the breach would not constitute a violation of the Internal Revenue Code. See 26 U.S.C. § 6159. The court also rejected Ullman's argument that the installment agreement was actually an offer in compromise. Finally, in dismissing Ullman's counterclaim, the court held that the Government did not engage in unauthorized collection activities under 26 U.S.C. § 7433.

Ullman subsequently filed a timely motion for reconsideration of the May 8, 2002 order, as well as several motions to compel the United States to provide or disclose written documents issued by the national office of Chief Counsel, and a motion for sanctions. By order entered June 13, 2002, the District Court denied the motion for reconsideration and also denied Ullman's motions to compel and motion for sanctions. Ullman timely appeals.

Ullman raises the same arguments on appeal that were raised in the proceedings before the District Court.

After careful review of the record, we will affirm the District Court. Ullman's contentions on appeal lack merit. His attempt to change the express terms of his written installment agreement is meritless and properly was rejected by the District Court for the reasons given by the District Court. Ullman's motion to file supplemental briefs out of time and motion to supplement the record are granted. Ullman's request for oral argument is denied as moot.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-2752

UNITED STATES OF AMERICA

v.

ROBERT M. ULLMAN,
Appellant.

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ.) No. 01-cv-00272)
District Judge: Honorable Ronald L. Buckwalter

Submitted Under Third Circuit LAR 34.1(a)
January 22, 2003

Before: NYGAARD, GREENBERG and COWEN,
Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of

Pennsylvania. On consideration whereof it is now here ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered on June 13, 2002 be, and the same is, hereby affirmed.

Costs taxed against the Appellant. All of the above in accordance with the Opinion of this Court.

ATTEST:

Acting Clerk

DATED: January 28, 2003

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-2752

UNITED STATES OF AMERICA
v.
ROBERT M. ULLMAN,
Appellant.

On Appeal From the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civ.) No. 01-cv-00272)

SURPETITION FOR PANEL REHEARING

The Petition for rehearing filed the Appellant in the above-entitled matter, having been submitted to the judges who participated in the decision of this court, and no judge who concurred in the decision having asked for rehearing, the Petition for Rehearing is hereby DENIED.

It is so ordered.

By the Court,

United States Circuit Judge

DATE: Apr. 14, 2003

Received and Filed

4-14-3
Marcia M. Wadron,
Clerk

lwc/a: RMU
RF
CCP

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